



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-70,747-06

EX PARTE EDWARD LEE BUSBY JR., Applicant

**ON APPLICATION FOR POST-CONVICTION WRIT OF HABEAS CORPUS
FROM CAUSE NO. C-2-W011911-0920589-C
IN CRIMINAL DISTRICT COURT NO. 2
TARRANT COUNTY**

Per curiam.

ORDER

We have before us a subsequent application for a writ of habeas corpus filed pursuant to the provisions of Texas Code of Criminal Procedure Article 11.071 § 5 and a motion to stay Applicant's execution.¹

In November 2005, a jury convicted Applicant of the January 2004 killing of a 78-year-old woman committed in the course of abducting and robbing her. *See* TEX. PENAL

¹ All references to "articles" in this order refer to the Texas Code of Criminal Procedure unless otherwise specified.

CODE § 19.03(a). Based on the jury’s answers to the special issues submitted pursuant to Article 37.071, the trial court sentenced Applicant to death. Art. 37.071 § 2(g). This Court affirmed Applicant’s conviction and sentence on direct appeal. *Busby v. State*, 253 S.W.3d 661 (Tex. Crim. App. 2008). We also denied relief on Applicant’s initial writ of habeas corpus application. *Ex parte Busby*, No. WR-70,747-01 (Tex. Crim. App. Feb. 25, 2009) (not designated for publication).

On October 1, 2012, Applicant filed his first subsequent writ application in the convicting court. Applicant raised three allegations in this application. He claimed that: (1) his counsel rendered ineffective assistance by (a) failing to conduct a reasonable punishment-phase investigation, and (b) failing to present the admissions of his co-defendant “Kitty,” in which she accepted a leadership role in the offense; (2) he is intellectually disabled and, therefore, cannot constitutionally be executed; and (3) his death sentence violates the Eighth and Fourteenth Amendments because he is severely mentally ill. This Court found that none of the claims met the requirements of Article 11.071 § 5(a), and it dismissed the writ. *Ex parte Busby*, No. WR-70,747-02 (Tex. Crim. App. Mar. 6, 2013) (not designated for publication).

On January 29, 2021, Applicant filed in the convicting court his second subsequent habeas application (our -06). He raises a single claim in the application in which he asserts that his execution would violate the Eighth and Fourteenth Amendments because he is intellectually disabled. After reviewing the record, we have determined that

Applicant's claim meets the dictates of Article 11.071 § 5(a)(1). We therefore stay his execution and remand the intellectual disability claim to the trial court for a review of the claim's merits.

IT IS SO ORDERED THIS THE 3RD DAY OF FEBRUARY, 2021.

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